IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 5866 OF 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MAHAVIR GENERAL HOSPITAL - Petitioner(s)
Versus
SAMIR NATWARLAL SHAH - Respondent(s)

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Appearance :
Shri Prabhav Mehta for Petitioner(s).
Shri Anand L. Sharma for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/08/2007

ORAL JUDGMENT

The petitioner, being aggrieved by the award dated 26th

February, 1998 passed by the learned Labour Court, Surat in Reference (LCS) No.298 of 1985, directing reinstatement of the respondent to his original post with full back-wages and all consequential benefits with costs of Rs.500/-, is before this Court with a submission that the learned Labour Court acted illegally in directing the reinstatement.

2. The shorts facts necessary for disposal of the present Writ Application are that the respondent-workman remained absent from his duties and on being asked to report back, he applied for special/privilege leave. The prayer was rejected on the ground that he had no balance leaves in his favour. Thereafter, a charge-sheet was issued to the workman, the Inquiry Officer recorded that the workman had admitted the guilt before him and he, accordingly, referred the matter to the disciplinary authority. When the second notice to show cause was issued, the workman made a candid statement that he did never admit his guilt and records of the inquiry proceedings were incorrect. Despite this allegation, the disciplinary authority did not hold any further inquiry, but, relied upon the statement of the Inquiry Officer and directed discharge of the workman from the services. Thereafter, the matter came to the learned Labour Court. The learned Labour Court recorded the findings that the inquiry was absolutely illegal. Being aggrieved by the said order, the present petitioner came to this Court in Special Civil Application No.1192 of 1992, but, the said petition was dismissed on 25th

February, 1992 with a clarification that if the matter is finally adjudicated against the interest of the petitioner, it would be at liberty to raise the points raised in the said petition. The learned Labour Court, after recording the evidence and hearing the parties, issued directions in favour of the respondent-workman. The petitioner-Establishment is again before this Court.

3. Shri Prabhav Mehta, learned Counsel for the petitioner, submits that the learned Court below was absolutely unjustified in directing reinstatement with full back-wages and other consequential benefits, though the respondent had categorically admitted the wrong committed by him.

4. Shri Anand Sharma, learned Counsel for the respondent, on the other hand, submitted that the question of admission, as recorded by the Inquiry Officer, was a question of fact and if that factual aspect of the alleged admission was being challenged by the workman before the disciplinary authority, then, the disciplinary authority was required to make an inquiry into the allegations made by the respondent and into the conduct of the Inquiry Officer. He submitted that the learned Court below was justified in setting aside the order of discharge.

5. Undisputedly, the workman had challenged the statement

made by the Inquiry Officer that the present respondent-workman had admitted the guilt during the inquiry proceedings. The Inquiry Officer is not the final authority to record findings on the subject, but, the findings recorded by him are subject to scrutiny and approval by the disciplinary authority. If the disciplinary authority is satisfied that the report of the Inquiry Officer is wrong, then, it can exonerate the delinquent or in the alternative, can issue a direction for a fresh inquiry. In the present case, unfortunately, despite a serious allegation against the Inquiry Officer that he was recording wrong proceedings, the disciplinary authority did not make any order of inquiry into the conduct of the Inquiry Officer or into the correctness of the allegations of the respondent-workman. The order of discharge passed by the disciplinary authority was based upon the findings recorded by the Inquiry Officer and if such findings cannot be relied upon, then, the learned Labour Court was absolutely justified in setting aside the order of discharge/dismissal. No other point was pressed.

6. The petition is dismissed with no order as to costs. Rule is discharged. Interim relief, if any, is vacated.

[R.S.Garg, J.]

*kamlesh**